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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,805	03/10/2004	Ronald D. Shippert	1684-111	7102
22442	7590	03/04/2010		
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER JACKSON, BRANDON LEE	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 03/04/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/798,805

**Applicant(s)**

SHIPPERT, RONALD D.

**Examiner**

BRANDON JACKSON

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to amendments/arguments filed 10/9/2009.  
Currently, claims 1-20 are pending in the instant application.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 9 and 18-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Barasch (US Patent 3,494,726). Groiso discloses a method of providing a heated medical device comprising a kit including a

medical device (2) having first and second surfaces, a bag (9) for housing liquid (col. 4, lines 48-49), heating the medical device (2) while in the bag col. 5, lines 28-32), and removing the medical device (2) the bag (9). Groiso fails to disclose a removal member; however, Barasch discloses a kit for heating a medical device (12) comprising a bag (10) with a medical device (12) inside, and a removal member (11) in contact with the first and second surfaces of the medical device (12). The removal member (11) is a folded sheet (fig. 2) that has a width (fig. 1) less than the width of the bag (10), as well as, a height that is greater than the bag (10) when the folded sheet is extended (fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso kit with the removal member, as taught by Barasch, to prevent the medical device from puncturing the bag. The Groiso/Barasch removal member (11) obviously would be positioned partly out of the bag when the medical device (2) is being removed. This would occur when tongs are used to grasp the removal sheet (11) and pull it from the bag (9).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso/Barasch, as applied to claim 9 above, and further in view of Fried et al. (US Patent 6,725,118). Groiso/Barasch substantially discloses the claimed invention; see rejection to claim 1 above. Groiso/Barasch also discloses holes (2A) in the medical device (2). Groiso/Barasch fail to disclose the holes in the splint are formed by a laser. However, Fried discloses forming a splint via a laser (col. 5, lines 18-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to

modify the Groiso/Barasch device to be formed by a laser, as taught by Fried, because it is a quick way to form a splint to the exact dimensions desired by the user.

Claims 6-8, 11, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Barasch (US Patent 3,494,726) and Faries (US Patent 6,910,485). Groiso discloses a method of providing a heated medical device comprising a kit including a medical device (2) having first and second surfaces, a bag (9) for housing liquid (col. 4, lines 48-49), heating the medical device (2) while in the bag col. 5, lines 28-32), and removing the medical device (2) the bag (9). Groiso fails to disclose a removal member; however, Barasch discloses a kit for heating a medical device (12) comprising a bag (10) with a medical device (12) inside, and a removal member (11) in contact with the first and second surfaces of the medical device (12). The removal member (11) is a folded sheet (fig. 2) that has a width (fig. 1) less than the width of the bag (10), as well as, a height that is greater than the bag (10) when the folded sheet is extended (fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso kit with the removal member, as taught by Barasch, to prevent the medical device from puncturing the bag. The Groiso/Barasch removal member (11) obviously would be positioned partly out of the bag when the medical device (2) is being removed. This would occur when tongs are used to grasp the removal sheet (11) and pull it from the bag (9).

Groiso fails to disclose a heating unit. One of the objectives of the Groiso device is to be able to heat a splint with minimal instruments. However, Groiso teaches the bag (9), which contains the medical device (2), can be heated by submerging the bag in hot water. In order to heat the water that the bag will be submerged in, a heating unit must be used to heat the water. Faries discloses a heating unit (31) comprising a heating plate (bottom of basin 33) that would come in contact with whatever is placed upon the heating plate (bottom of basin 33). The temperature of the heating plate (bottom of basin 33) is maintained using electrical power (col. 6, lines 27-30). The heating unit (31) includes an opening (top of basin 33) that is longer than it is wide (fig. 15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso device with the heating unit (31), as taught by Faries, as a means for heating the water for the bag to be submerged in.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso/Bardasch/Faires, as applied to claim 11 above, and further in view of Hand et al. (US Patent 5,769,089). Groiso/Bardasch/Faires substantially discloses the claimed invention; see rejection to claim 13 above. Groiso/Bardasch/Faires fails to disclose the adhesive on one side of the nose splint. However, Hand discloses a nasal splint (1) comprising an adhesive layer (11) and a wrap (10) not in contact with the adhesive layer (11). The adhesive would be positioned on a portion of the side of the device (1) that is to be applied to the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the

Groiso/Bardasch/Faires medical device for the splint, as taught by Hand, in order to substitute the medical device for a splint that will also exhibit some forces that will lift the skin of the user's nose and open the breathing passageway. Moreover, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Hand splint with holes, as taught by Groiso, in order to allow the user's skin to breathe and prevent the heat from the user's body from causing the adhesive to be not functional.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

/BLJ/

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772